

DEPARTMENT OF HEALTH

Amendment and Compilation of Chapter 11-218
Hawaii Administrative Rules

September 26, 2005

SUMMARY

1. §11-218-1 is amended.
2. §§11-218-3 to 11-218-6 are amended.
3. §§11-218-8 to 11-218-9.5 are amended.
4. §11-218-13.4 is added.
5. §11-218-13.5 is amended.
6. Chapter 218 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 218

COMMUNICATION ACCESS SERVICES FOR PERSONS WHO ARE DEAF,
HARD OF HEARING, AND DEAF-BLIND

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§11-218-1 Purpose and scope. The purpose of these rules is to establish guidelines for the use of communication access services by persons who are deaf, hard of hearing, or deaf-blind for effective communication in programs and activities of state departments and agencies. The optimal situation is one in which the state program or activity is able to communicate directly with the person who is deaf, hard of hearing, or deaf-blind. When direct communication is not possible, this chapter provides guidelines for hiring communication access providers. [Eff 5/17/91; am and comp 6/10/94; comp 4/3/97; am and comp 11/6/2000; am and comp 10/13/05] (Auth: HRS §348F-6) (Imp: HRS §348F-3)

§11-218-2 Interpretation. If any provision of these rules is inconsistent with requirements of the Americans with Disabilities Act of 1990, Public Law 101-336, as amended, and Section 504 of the Federal Rehabilitation Act of 1973, Public Law 93-112, as amended, the provision shall be construed to be superseded or governed thereby. These rules shall be construed liberally and consistent with the purpose stated in section 11-218-1. [Eff 5/17/91; am and comp 6/10/94; am and comp 4/3/97; am and comp 11/6/2000; comp 10/13/05] (Auth: HRS §348F-6) (Imp: HRS §348F-3)

§11-218-3 Definitions. As used in this chapter, unless the context clearly indicates otherwise:

"Board" means the Disability and Communication Access Board.

"Certified real-time captioner" means any person who holds any valid certifications awarded by either the National Court Reporters Association (NCRA) or a state board of certified shorthand reporters as defined in Appendix F "Valid certifications awarded by The National Court Reporters Association" (November 26, 2004).

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"Communication access services" means services rendered by a provider to facilitate communication between the person who is deaf, hard of hearing, or deaf-blind and hearing consumers. Communication access services include, but are not limited to, interpreter services, real-time captioning services, and computer-assisted notetaking services.

"Computer-assisted notetaker" means a person who provides computer-assisted notetaking services.

"Computer-assisted notetaking services" means services performed by a typist using a word processor on a computer. The services provide a summary of a speaker's words or notes for situations such as a meeting or a group discussion. The words are typed into a word processor and displayed onto a screen. Computer-assisted notetaking services are distinguished from real-time captioning services in that the words are typed simultaneously but not necessarily verbatim and that stenographic equipment and skills are not involved.

"Credentials" means any certification or classification that is awarded to providers as defined in this section.

"Person who is Deaf or hard of hearing" means any person who, with or without amplification, cannot hear and understand spoken language.

"Person who is Deaf-blind" means any person who, with or without the assistance of hearing or visual aids, has both auditory and visual disabilities that interfere with communication.

"Hearing consumer" means any hearing individual that requires communication access services to communicate with persons who are deaf, hard of hearing, or deaf-blind.

"HQAS" means the Hawaii Quality Assurance System, an interpreter screening instrument administered by the state screening agency. Functional descriptions for HQAS levels are shown in Appendix B, "Functional Description of HQAS Levels" (July 21, 2005).

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"HQAS +H" means the Hawaii Quality Assurance System in addition to the optional local Hawaii language competency test.

"Interpreter services" means services rendered by a locally-classified or nationally-certified interpreter as defined in this section.

"Nationally-certified interpreter" means any person who holds valid certificates or credentials awarded by the Registry of Interpreters for the Deaf, Inc. (RID) or National Council on Interpreting (NCI), as defined in Appendix C "Registry of Interpreters for the Deaf, Inc. Description of RID Certifications" (November 26, 2004) or the National Association of the Deaf, Inc. (NAD) as defined in Appendix D, "National Association of the

Deaf, Inc. Interpreter Assessment and Certification" (July 1, 2001).

"Provider" means any provider of communication access services including, but not limited to, a nationally-certified interpreter, a state credentialed interpreter, a certified real-time captioner, or a computer-assisted notetaker.

"Real-time captioning services" means services performed by a certified real-time captioner in order to facilitate communication for persons who are deaf, hard of hearing, and deaf-blind. The services provide simultaneous transcription of a speaker's words by using a stenographic machine, a computer, and real-time captioning software, and by projecting the words onto a screen.

"State agency" means any department, office, board, or commission of the State, or the University of Hawaii.

"State screening agency" means the disability and communication access board issuing credentials under the Hawaii Quality Assurance System which shall be honored statewide.

"State credentialed interpreter" means any person who holds valid HQAS credentials defined in Appendix B and awarded by the state screening agency.

[Eff 5/17/91; am and comp 6/10/94; am and comp 4/3/97; am and comp 11/6/2000; am and comp 10/13/05] (Auth: HRS §348F-6) (Imp: HRS §348F-3)

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§11-218-4 Credentials of providers. (a) The credentials of providers shall be based on the level and specialization determined by the national organizations or state screening agency which provide the credentials listed in §11-218-3. The Board shall review criteria of the credentials awarded by national organizations and the state screening agency with input from the community. Documentation of completion of sign language courses or interpreter training programs shall not be substituted for credentials listed in section 11-218-3.

(b) Currently there are no known national organizations or state screening agency that award credentials for computer-assisted notetakers. It is recommended that the state agencies utilize persons who meet the following characteristics in order to provide computer-assisted notetaking services: ability to organize and summarize information; ability to type at least 60 words per minute; familiarity with the subject being discussed; experience working with persons who are deaf, hard of hearing, or deaf-blind; working knowledge of laptop computers and word-processing software; and

good auditory, verbal, and spelling skills. [Eff 5/17/91; comp 6/10/94; comp 4/3/97; am and comp 11/6/2001; am and comp 10/13/05] (Auth: HRS §348F-6) (Imp: HRS §348F-3)

§11-218-5 Repealed. [R 11/6/2000]

§11-218-5.1 Fee schedule guidelines. (a) State agencies hiring providers as independent contractors on a fee for service basis may negotiate fees with the provider. Appendix A, "Recommended Fee Schedules for Providers (July 21, 2005)," located at the end of this chapter, is made a part of this chapter. The hourly rates listed in Appendix A are recommended rates for providers used by state agencies for one-time, ad-hoc, or single units of service. In addition, Appendix A includes recommendations for mileage, travel, and other allowable charges.

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(b) State agencies hiring providers as independent contractors for on-going or continuing assignments may negotiate fees and terms independent of the hourly rates shown in Appendix A. This paragraph shall not be construed to supercede the provisions of section 11-218-8.

(c) The Board shall review the recommended fee schedules, annually or as needed, with consideration of the current market value of those services as well as input from consumers, providers, and state agencies. [Eff and comp 11/6/2000; am and comp 10/13/05] (Auth: HRS §348F-6) (Imp: HRS §348F-3)

§11-218-6 Cancellation of services. Fees shall be determined in accordance with the time of cancellation of services:

- (1) For assignments less than two hours in duration, and if a cancellation notice is given at least twenty-four hours in advance, no fee shall be assessed. If the cancellation notice is given less than twenty-four hours in advance, the full charge for the requested period shall be assessed.
- (2) For assignments two hours or more but less than four hours in duration, and if a cancellation notice is given at least forty-eight hours in advance, no fee shall be

assessed. If the cancellation notice is given less than forty-eight hours in advance, the full charge for the requested period shall be assessed.

- (3) For assignments four hours or more in duration, and if a cancellation notice is given at least seventy-two hours in advance, no fee shall be assessed. If the cancellation notice is given less than seventy-two hours in advance, the minimum two hour fee plus one-half of the fee for the remaining scheduled time shall be assessed. If the cancellation notice is

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given less than forty-eight hours in advance, the full fee shall be assessed.

- (4) If an essential person who is deaf, hard of hearing, or deaf-blind, or a hearing consumer of interpreting or other communication access services fails to appear, this shall be considered a cancellation and the provider hired for that assignment shall be paid the full fee for the requested period by the state agency.
- (5) If a provider fails to appear, no fee shall be paid by the state agency.
- (6) For assignments where two providers are scheduled and one fails to appear, the solo provider shall be paid the full fee plus 30 per cent of the hourly rate. [Eff 5/17/91; comp 6/10/94; comp 4/3/97; am and comp 11/6/2000; am and comp 10/13/05] (Auth: HRS §348F-6) (Imp: HRS §348F-3)

§11-218-7 Repealed. [R 11/6/2000]

§11-218-7.1 Repealed. [R 11/6/2000]

§11-218-7.2 Repealed. [R 11/6/2000]

§11-218-8 Provision of services. (a) Any person meeting any one of the definitions of nationally-certified or state credentialed interpreter, certified real-time captioner, or computer-assisted notetaker provided in section 11-218-3 may be hired as a provider

of interpreter services, real-time captioning services, or computer-assisted notetaking services.

(b) Any state agency shall acquire the services of a provider with the appropriate credentials when one is necessary for a person who is deaf, hard of hearing, or deaf-blind to effectively participate in an activity or program of that agency.

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A state agency shall hire the preferred provider of the person who is deaf, hard of hearing, or deaf-blind when possible. If no preference is stated, providers with the highest level of credentials shall be hired first, followed by lesser levels of credentials, in the order listed in Appendix A.

(c) For assignments of more than one and one-half hours in length, and with continuous work (for example, a workshop or meeting), the state agency shall request two providers for the total time of the assignment to actively work for alternate periods of twenty minutes each. If only one provider is available and hired for an assignment with continuous work of more than one and one-half hours in length, the state agency shall ensure that the provider is given breaks as necessary or as negotiated prior to the assignment.

(d) Any person who is deaf, hard of hearing, or deaf-blind shall inform the state agency of the need for communication access services, allowing reasonable time to hire providers. [Eff 5/17/91; am and comp 6/10/94; am and comp 4/3/97; am and comp 11/6/2000; am and comp 10/13/05] (Auth: HRS §348F-6) (Imp: HRS §348F-3)

§11-218-8.1 Role of a provider who is deaf, hard of hearing, or deaf-blind. If a person who is deaf, hard of hearing, or deaf-blind cannot benefit from conventional communication access services, then a team of two providers shall be hired upon request to ensure effective communication. The second provider, who is deaf, hard of hearing, or deaf-blind, would relay information between the consumer and the hearing provider, using a three-way communication. [Eff and comp 11/6/2000; am and comp 10/13/05] (Auth: HRS §348F-6) (Imp: HRS §348F-3)

§11-218-9 Rights of consumers to communication access services. Any person meeting any one of the

definitions of person who is deaf, hard of hearing, or deaf-blind or hearing consumer as provided in section 11-218-3 shall be provided communication access services as requested in any program or activity of a state agency. Persons who are deaf, hard of hearing, or deaf-blind who request communication access services for any program or activity may identify and request their preferred provider. The requirement for credentials may be waived if the person who is deaf, hard of hearing, or deaf-blind indicates preference for someone who does not have credentials. The state agency shall certify and document that the person who is deaf, hard of hearing, or deaf-blind specified a provider without credentials. [Eff 5/17/91; am and comp 6/10/94; am and comp 4/3/97; am and comp 11/6/2000; am and comp 10/13/05] (Auth: HRS §348F-6) (Imp: HRS §348F-3)

§11-218-9.5 Code of ethics. Services of HQAS interpreters shall be rendered in a manner consistent with Appendix E, "The Hawaii Quality Assurance System Code of Ethics" (October 19, 2000). RID, NAD, NCRA, or NAD-RID NCI certified interpreters shall follow their respective code of ethics. Services shall be rendered by providers in a manner consistent with Appendix E, or their respective certification's code of ethics. [Eff and comp 11/6/2000; am and comp 10/13/05] (Auth: HRS §348F-6) (Imp: HRS §348F-3)

§11-218-10 Repealed. [R 6/10/94]

§11-218-11 Repealed. [R 6/10/94]

§11-218-12 Application and renewal of credentials. Every application for credentials shall be made upon forms available from the appropriate national organizations or the state screening agency which provides credentials, as indicated in section

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11-218-3. Fees accompanying the application, if any, shall be set by these organizations.

It is the responsibility of the provider to maintain current credentials. [Eff 5/17/91; am and comp 6/10/94; comp 4/3/97; am and comp 11/6/2000; comp 10/13/05] (Auth: HRS §348F-6) (Imp: HRS §348F-3)

§11-218-13 Validity of credentials. The validity of credentials shall be based on criteria for maintenance of credentials established by the appropriate national organizations or the state agency which provides credentials as indicated in section 11-218-3. It is the responsibility of the provider to furnish, upon request, documentation of credentials to the state agency when communication access services are contracted. [Eff 5/17/91; am and comp 6/10/94; comp 4/3/97; am and comp 11/6/2000; comp 10/13/05] (Auth: HRS §348F-6) (Imp: HRS §348F-3)

§11-218-13.4 Test Procedures and Grievances. The HQAS shall be administered by the state screening agency. Candidate grievances shall be filed in writing to the the disability and communication access board executive director. The disability and communication access board executive director shall reply in writing within 30 days. If the candidate is not satisfied with the response of the executive director, then the candidate may request a reply from the disability and communication access board. The board shall consider all relevant comments and materials of record before taking final action. [Eff and comp 10/13/05] (Auth: HRS §348F-6) (Imp: HRS §348F-3)

§11-218-13.5 Testing Fees. The disability and communication access board shall establish a fee to be charged to each candidate applying for HQAS credentials.

- (1) Fees collected under this section shall be deposited in the special fund.

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- (2) Candidate fees shall be \$200 for the combined HQAS test including the written test, and interpreting/transliterating performance test.
- (3) Candidate fees shall be used to pay for the costs of the independent evaluators' services of the performance test. If a candidate wishes to appeal the test scores, the candidate may request for a second set of evaluations with the payment of a second candidate fee. [Eff 12/24/01; am and comp

12/24/01; am and comp 10/13/05] (Auth: HRS §§348F-7 to 348F-8) (Imp: HRS §§348F-7 to 348F-8)

§11-218-14 Reciprocal recognition. State agencies are encouraged to recognize and honor providers with current and valid credentials from jurisdictions other than the State of Hawaii for a period of six months or until a state screening or testing is conducted. These credentials shall be considered current and valid if they were awarded not more than two years prior to the date of hire, unless otherwise indicated by the documentation of such credentials. [Eff 5/17/91; am and comp 6/10/94; am and comp 4/3/97; am and comp 11/6/2000; comp 10/13/05] (Auth: HRS §348F-6) (Imp: HRS §348F-3)

§11-218-15 Severability. If any provision of this chapter or the application thereof to any person or circumstance is for any reason held to be unconstitutional or invalid, the remaining portion of these rules or the application thereof to any person or circumstance shall not be affected." [Eff 5/17/91; comp 6/10/94; comp 4/3/97; comp 11/6/2000; comp 10/13/05] (Auth: HRS §348F-6) (Imp: HRS §348F-3)

Department of Health

Amendments to and compilation of chapter 218, title 11, Hawaii Administrative Rules, on the Summary Page dated September 26, 2005, were adopted on July 21, 2005, following a public hearing on May 6, 2005, after public notice was given in the Honolulu Star Bulletin, Hawaii Tribune Herald, West Hawaii Today, Maui News, and Garden Isle on April 3, 2005.

The amendments shall take effect ten days after filing with the Office of Lieutenant Governor.

/S/

Chiyome Leinaala Fukino, M.D.
Director of Health

APPROVED:

/S/

LINDA LINGLE
Governor
State of Hawaii

Date: October 3, 2005

Filed

APPROVED AS TO FORM:

/S/

Deputy Attorney General